

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

LARRY NEWMAN, )  
                        )  
                        )  
Movant,              )  
                        )  
                        )  
v.                     )  
                        )  
                        )  
UNITED STATES OF AMERICA, )  
                        )  
                        )  
Respondent.           )

**MEMORANDUM AND ORDER**

This matter is before the Court upon movant Larry Newman's response to this Court's April 19, 2018 Order directing him to show cause why his motion to vacate, set aside or correct sentence under 28 U.S.C. § 2255 should not be dismissed as untimely. After reviewing and considering movant's response, the Court has determined to dismiss the motion without further proceedings.

As fully set forth in this Court’s April 19, 2018 Order, movant filed his motion more than five years after the expiration of the one-year limitations period applicable to motions filed pursuant to § 2255. In addition, he did not demonstrate, nor was it apparent, that the decision upon which he relied, *Dean v. United States*, 137 S.Ct. 1170 (2017), triggered the application of § 2255(f)(3). The Court directed movant to show cause why his motion should not be dismissed as time-barred.

Movant filed a timely response. (Docket No. 4). Therein, he makes no attempt to argue that his motion is timely. Instead, he asks the Court to dismiss it. Having determined that the motion was untimely filed, and having considered movant's response, the Court will dismiss the motion pursuant to Rule 4(b) of the Rules Governing Section 2255 proceedings in the United States District Courts. *See Day v. McDonough*, 547 U.S. 198, 210 (2006) (a district court may

consider, on its own initiative, whether a habeas action is time-barred, but must provide notice to the movant before dismissing it as such).

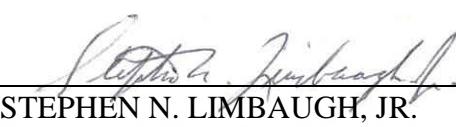
The Court has considered whether to issue a certificate of appealability. To do so, the Court must find a substantial showing of the denial of a federal constitutional right. *See Tiedeman v. Benson*, 122 F.3d 518, 522 (8th Cir. 1997). A substantial showing is a showing that issues are debatable among reasonable jurists, a Court could resolve the issues differently, or the issues deserve further proceedings. *Cox v. Norris*, 133 F.3d 565, 569 (8th Cir. 1997) (*citing Flieger v. Delo*, 16 F.3d 878, 882–83 (8th Cir. 1994)). Because movant has made no such showing, the Court will not issue a certificate of appealability.

Accordingly,

**IT IS HEREBY ORDERED** that Larry Newman's motion to vacate, set aside or correct his sentence under 28 U.S.C. § 2255 is **DISMISSED**. A separate order of dismissal will be entered herewith.

**IT IS FURTHER ORDERED** that no certificate of appealability shall issue.

Dated this 8<sup>th</sup> day of May, 2018.



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STEPHEN N. LIMBAUGH, JR.  
UNITED STATES DISTRICT JUDGE